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United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

April 6, 1994

Mr. Scott M. DuBoff
WINSTON & STRAWN
1400 L Street, N.W.
Washington, D.C. 20005-3502

Dear Mr. DuBoff:

In your letter of February 9, 1994, you request clarification of the Agency's interpretation of "active management" in the closing of waste management facilities (surface impoundments) that contain waste sludges meeting the description of waste types that became subject to Subtitle C of the Resource Conservation and Recovery Act (RCRA) after the impoundments had been permanently removed from service. Specifically, this request seeks verification of a site-specific case described in the letter.

In the specific case of an impoundment which stopped receiving or generating any hazardous wastes prior to the effective date of the newly identified characteristic or newly identified listing, and the impoundment is the final disposal site for the wastes, the unit is not subject to regulation under 40 CFR parts 264 or 265 (See 55 FR 39410, September 27, 1990 and 55 FR 46383, November 2, 1990). However, it should be noted that inactive units that are located at facilities otherwise subject to Subtitle C interim status or permitting requirements are solid waste management units subject to corrective action requirements under sections 3008(h) and 3004(u) of RCRA. Any treatment, storage, or disposal of wastes (i.e., active management) in the unit after the effective date of the new listing or characteristic could subject the unit and wastes to Subtitle C control.

Section 3005 of RCRA prohibits the operation of hazardous waste treatment, storage, or disposal facilities without a permit. EPA interprets the term "disposal" for purposes of RCRA Subtitle C regulation to have the same meaning as the term "land disposal" as

defined under section RCRA 3004(k). Therefore, conducting any of the activities that constitute "land disposal" of hazardous waste will subject the unit to Subtitle C permitting and land disposal restrictions. "Land disposal" occurs when hazardous wastes are placed into a unit, including when hazardous wastes from different units are consolidated into one unit, or removed and treated outside a unit and redeposited, or treated within the unit in an incinerator, impoundment, or tank and then redeposited. "Land disposal" does not occur, for example, when hazardous wastes are moved or consolidated within a unit, treated in situ, or capped in place, or when non-hazardous solid waste is added to the unit. As noted in the final rule which identified wastewater treatment sludges from petroleum refining as hazardous wastes (55 FR 46383, November 2, 1990), EPA does not view the one time removal of wastes during closure as changing the status of the unit with respect to permitting, as long as there has not been ongoing management of the waste in the impoundment. One-time removals do "generate" waste, and this waste must comply with treatment standards prior to final land disposal.

It also should be noted that although the movement of waste within a unit would not constitute land disposal under RCRA 3005 or 3004(k) (as described above), this activity would generally be defined as "disposal" under RCRA section 1004(3) and thus be subject to RCRA section 7003 authorities.

During closure-in-place, the sludges are often mixed with a stabilizing material designed to stabilize the sludge either chemically or physically to provide sufficient bearing capacity for the placement of an impervious cap and to prevent migration of any contaminants to groundwater from a unit. Conducting activities that constitute hazardous waste "treatment" (including in situ treatment) would subject the unit to permit requirements as a hazardous waste treatment facility.

Because "treatment" may be occurring during activities designed to stabilize the wastes prior to capping, Subtitle C permitting may be triggered. However, whether or not the addition of material to improve the load-bearing ability of final cover actually involves the physical or chemical stabilization (i.e., treatment) of RCRA hazardous waste is a site-specific determination. Therefore, we will forward your letter to Region V and help the appropriate Regional staff obtain any additional

national guidance they may require.

Sincerely,
David Bussard, Director
Characterization and Assessment Division

cc: David Fagan, OSW/PSPD, 5303W; Richard Witt, OGC, 2355;
Mike Ribody, Region V